



UPD: OVERVIEW OF KEY MEASURES TO RESPOND TO SANCTIONS IMPOSED BY UNFRIENDLY COUNTRIES

As of 11:00 am (Moscow time) on 13 February 2023

Disclaimer: This review was last updated at 11:00 am (Moscow time) on 13 February 2023. It provides information on regulations adopted by the federal authorities in response to unfriendly actions by the United States and its affiliated countries that may affect persons doing business in the Russian Federation. The data in this Review is provided for reference only and does not address your specific circumstances. Please seek a professional legal advice.

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BACKGROUND

1. Sources of countersanctions

"Measures to influence (counter) unfriendly actions of foreign states" (hereinafter referred to as the "**Countersanctions**") are primarily introduced by resolutions of the Russian President in accordance with federal laws¹. In furtherance of the resolutions of the President of the Russian Federation, the Government of the Russian Federation adopts orders to specify the procedure to implement the Countersanctions.

Moreover, pursuant to Federal Law No. 86-FZ "On the Central Bank of the Russian Federation (Bank of Russia)" dated 10 July 2002, the Central Bank of Russia may use tools intended to enhance the financial market stability.

In addition, a number of laws were adopted to amend the current corporate legislation, and competition, trade, and currency regulation laws.

Please note that the rule-making in the current situation is characterised by hastiness of the regulations adopted and results in imperfect legal workmanship during their approval and publication and inconsistent responsibilities of different authorities. Some of the problems are subsequently eliminated in explanations and information letters issued by state authorities and their officials, and in protocols of the Government Commission on Monitoring Foreign Investment in the Russian Federation (hereinafter referred to as the "**Government Commission**"), which authorise an indefinite range of persons to perform certain transaction types.

2. "Unfriendly" persons

Most Countersanctions use the "unfriendly states" and "foreign persons associated with unfriendly states" terms. The list of "unfriendly states" has been approved by Decree of the Government of the Russian Federation No. 430-r dated 5 March 2022². A person qualifies as restricted under the Countersanctions if (s)he is associated with "unfriendly states" based on his/her:

¹ The countersanctions have been introduced by the following federal laws: dated 30 December 2006 No. 281-FZ "On Special Economic and Coercive Measures"; dated 28 December 2010 No. 390-FZ "On Security" and dated 4 June 2018 No. 127-FZ "On Measures (Countermeasures) in Response to Unfriendly Actions of the United States of America and Other Foreign States."

² These countries include Australia, Albania, Andorra, Bahama Islands, the United Kingdom (including Crown Dependencies and Overseas Territories), EU member states, Iceland, Canada, Liechtenstein, Micronesia, Monaco, New Zealand, Norway, the Republic of Korea, San Marino, North Macedonia, Singapore, the United States, Taiwan (China), Ukraine, Montenegro, Switzerland, and Japan.

- Nationality;
- Place of registration;
- Principal place of business;
- Principal place of profit generation;
- Control by such persons.

The last of these criteria means that Russian subsidiaries of foreign companies or beneficiaries holding passports of "unfriendly" jurisdictions may themselves be recognized as the persons associated with "unfriendly" countries.

However, there are some exceptions to such criteria³. Thus, representatives of "unfriendly" countries do not include:

- Persons under the control of "friendly" persons, if such control was established before 1 March 2022;
- Persons under the control of a "friendly" foreign state, if such control was established before 1 March 2022;
- Persons who simultaneously meet the following requirements:
 - They are controlled by Russian corporations or individuals;
 - Such control is disclosed to Russian tax authorities (i.e. they are CFCs).

³ Decree of the President of the Russian Federation dated 4 May 2022 No. 254.

1. Restrictions on transactions with shares in LLCs

On 8 September 2022, Presidential Decree No. 618 (hereinafter referred to as "**Decree No. 618**") was adopted which established a special procedure for transactions with shares in LLCs. In accordance with the above Decree, transactions in respect of shares in an LLC involving persons from "unfriendly" states must be made with the permission of the Government Commission.

In particular, the following transactions may only be made subject to prior permission⁴:

- Transfer of a share to one or more LLC participants or to a third party;
- Acquisition by an LLC of its own share;
- Withdrawal of a participant from an LLC by alienating his/her share or demanding the company to acquire his/her share;
- Transfer of a share to an investment fund;
- Agreement with the company or an individual entrepreneur on transfer of the powers of the sole executive body;
- Agreement on the exercise of the rights of LLC participants;
- Convertible loan agreement;
- Share pledge agreement;
- Share pledge management agreement;
- Voluntary reorganisation;
- Simple partnership agreement executed by an LLC;
- Fiduciary management agreement, assignment agreement and/or another agreement which subject is the exercise of the rights certified by shares.

This list is not exhaustive.

⁴ Letter of the Ministry of Finance of the Russian Federation dated 13 October 2022 No. 05-06-14RM/99138.

The rules established by Decree No. 618 do not apply to:

- Transactions with shares in credit and non-credit financial institutions;
- Transactions with shares in an LLC which obtained the rights and obligations of Sakhalin Energy Investment Company, Ltd. in accordance with Decree of the President of the Russian Federation No. 416 dated 30 June 2022;
- Transactions with shares in Russian strategic industrial facilities and fuel and energy companies, which are made with the permission of the President of the Russian Federation in accordance with Decree of the President of the Russian Federation dated 5 August 2022 No. 520.
- Gratuitous transactions of resident individuals aimed at terminating the rights to shares in an LLC and/or the rights to manage an LLC for individuals from "unfriendly" states⁵. This exception applies if the parties to the transaction are spouses or close relatives in accordance with the Family Code of the Russian Federation.

For the purposes of Decree No. 618, the following persons are not considered foreign persons from "unfriendly" states:

- Persons who simultaneously meet the following requirements:
 - Persons under the control of Russian beneficiaries, including if such control is exercised through a person associated with an "unfriendly" state;
 - Information about the control has been disclosed to tax authorities of the Russian Federation.
- Persons under the control of:
 - Persons whose governing law is the law of a "friendly" state, or
 - A "friendly" foreign state, if such control was established before 1 March 2022.

Extract of the Subcommittee of the Government Commission dated 30 December 2022 No. 05-06-10/VN-67867 (hereinafter referred to as "**Extract No. VN-67867**") establishes mandatory conditions for alienation of shares and units (hereinafter referred to as "**Assets**") in the authorised capital of business entities by persons from "unfriendly" states.

⁵ Extract from the minutes of the meeting of the Government Commission No. 103/1 dated 2 November 2022.

These conditions include:

- Conducting an independent assessment of the Assets market value;
- Setting a discount for the Assets value established by the results of the assessment in the amount of at least 50%;
- Establishing key performance indicators for new Asset owners;
- The transaction shall provide for an installment payment for 1-2 years and/or an "obligation to voluntarily transfer funds to the federal budget" at the rate of at least 10% of the transaction amount.

2. Restrictions on transactions with shares and units of financial organisations

Decree of the President of the Russian Federation No. 737 dated 15 October 2022 establishes a general rule which requires transactions with foreign persons from "unfriendly" states in respect of more than 1% of shares / units of financial organisations be made only on the basis of a permission issued by the Government Commission.

Exceptions include transactions with shares or units of credit organisations from the list approved by Decree of the President of the Russian Federation dated 26 October 2022 No. 357-rp, which can only be made on the basis of a special resolution of the President of the Russian Federation⁶.

The above list comprises 45 business entities, including JSC OTP Bank, AO Raiffeisenbank, JSC Yandex Bank, Deutsche Bank LLC, Goldman Sachs Bank LLC, etc.

The above restrictions shall be valid until 31 December 2023⁷.

3. Buyback Permission for PJSCs

Decree No. 79 permitted public joint-stock companies to buy back their shares until 31 December 2022 for the purposes other than to reduce their number.

The permit is granted subject to a combination of conditions:

- Shares are listed;
- The weighted average share price decreased by at least 20% in any three months from 1 February 2022 compared to this price for three months starting from 1 January 2021;

⁶ Decree of the President of the Russian Federation dated 5 August 2022 No. 520.

⁷ Decree of the President of the Russian Federation dated 5 December 2022 No. 876.

- The underlying stock market index decreased by at least 20% in any three months from 1 February 2022 compared to such value for three months starting from 1 January 2021;
- Shares will be purchased through a bidding process based on public offers;
- Shares will be purchased by a broker;
- The Board of Directors of a PJSC has resolved to purchase the shares. The resolution may be undisclosed.

To confirm the above conditions are met, a PJSC shall send a notice with supporting documents to the Bank of Russia.

In general, Federal Law No. 208-FZ "On Joint Stock Companies" dated 26 December 1995 (hereinafter, the "**JSC Law**") has already provided for a buyback but based on resolution of the shareholders' meeting. The right to make such resolution could be granted to the Board of Directors in accordance with the Articles of Association. The JSC Law bans any buyback, if the total par value of outstanding shares is less than 90% of the authorised capital.

Decree No. 79 does not provide for a special procedure allowing to disregard the JSC Law, but only sets forth the prevalence over Clauses 4 (Requirements to Buyback and Share Payment Resolutions), 5 (Buyback Notification of Shareholders), 7 (Approval of Buyback Reports), and 8 (Application of Buyback Rules by Analogy at the Request of Shareholders) of Article 72 of the JSC Law. Other requirements of the JSC Law are not directly superseded.

4. Securities market participants may refrain from disclosing any corporate information

By Resolution of the Government of the Russian Federation No. 351 dated 12 March 2022, securities market participants are allowed to refrain from disclosing certain corporate information if the disclosure will or may lead to sanctions imposed in respect of the person whose information is disclosed. For instance, the following information may be undisclosed:

- Data on members of the issuer's management bodies, deputies of the sole executive body, chief accountant and his/her deputies, heads and chief accountants of the issuer's branches;
- Information on transactions of the issuer, its controlling persons and the entities controlled by it;

- Corporate action notices;
- Other information in accordance with the requirements of the JSC Law and the Federal Law "On the Securities Market".

The above rules are valid until 1 July 2023⁸.

Decree No. 618 has established that LLCs owned, directly or indirectly, by strategic enterprises need not provide information about their activities to LLC participants being persons from "unfriendly" states.

5. Ban on providing information about the Russian banks' clients

On 1 May 2022, Federal Law No. 125-FZ was adopted whereunder credit organisations are prohibited from providing information about the clients, their transactions, representatives and beneficiaries to state authorities of foreign states. Such information may only be provided in case of interaction with the persons who are subject to the laws of a foreign state on taxation of foreign accounts.

The Law establishes an obligation of credit organisations to notify the Bank of Russia of each request from foreign authorities. In its turn, the Bank of Russia will be able to allow provision of the necessary information on a case-by-case basis.

6. Distribution Restrictions

In its Letter dated 21 April 2022 No. 28-4-1/2139, the Bank of Russia explained that dividends on securities of a Russian issuer are to be paid to the persons from "unfriendly" states only to a type "C" account opened with an authorised bank.

According to normal procedure, dividends are paid to:

- Other holders of securities, provided that the securities were purchased before 1 March 2022;
- Holders of securities purchased after 1 March 2022, provided that they were not purchased from any persons from "unfriendly" states.

In Extract No. VN-67867, the Subcommittee confirmed the practice of the Ministry of Finance of the Russian Federation and the Bank of Russia to issue a permit to pay dividends to foreign creditors, provided that the following conditions are met:

- The amount of distributed profit must not exceed 50% of the net profit for the

⁸ Resolution of the Government of the Russian Federation dated 24 November 2022 No. 2131.

previous year;

- The company must be ready to continue its business activities in Russia;
- The Ministry of Finance of Russia or the Bank of Russia must analyse profit distribution for previous periods;
- Due regard is to be given to the position of the Bank of Russia and other executive authorities on assessing the significance of the company's activities and their impact on the technological and industrial sovereignty of Russia, the social and economic development of Russia and its regions;
- Executive authorities must establish target quarterly key performance indicators for the company. It is allowed to distribute profits every quarter, provided that these targets are met.

7. Temporary procedure for profit distribution by an LLC to persons from "unfriendly" states

Decree of the President of the Russian Federation No. 254 dated 4 May 2022 (hereinafter referred to as "**Decree No. 254**") establishes a temporary procedure for obligations to pay profits of Russian LLCs, business partnerships, and production cooperatives to persons from "unfriendly" states.

Thus, performance of financial obligations is governed by paragraphs 2-9 of Decree of the President of the Russian Federation No. 95. Therefore, profits exceeding RUB 10 million may only be paid by a resident using a type "C" account in a Russian bank opened in the name of a person from an "unfriendly" state. To deviate from the rules established by Decree No. 254, it is required to obtain permission from the Ministry of Finance of the Russian Federation⁹.

The rules of Extract No. VN-67867 on the conditions for granting a permission for dividend payment to foreign creditors also apply to distribution of profits of an LLC.

8. Special aspects of regulating corporate relations for 2023 have been determined

On 19 December 2022, Federal Law No. 519-FZ (hereinafter referred to as "**519-FZ**") entered into force, which extends certain special aspects of corporate relations regulation

⁹ The procedure for obtaining such a permit is explained by Information Letter of the Ministry of Finance of the Russian Federation dated 9 June 2022 "Issuance by the Ministry of Finance of the Russian Federation of Permits for Residents (LLCs, Business Partnerships, Production Cooperatives) to Perform Obligations to Foreign Participants on Profit Payment."

for 2023. In particular, until 31 December 2023:

- Weighted average price of shares bought back in case of reorganisation of a PJSC is determined by the trading results for one month. When determining the price for buyback of shares admitted to trading, no data on their market value is required.
- The creditor will have no right to demand the debtor to early perform the obligation arisen through bond placement if it is not related to the maturity date and is caused by:
 - Performance of another loan obligation by the debtor and/or his/her related persons;
 - Failure to perform or improper performance of another loan obligation by the debtor and/or his/her related persons, if its early performance resulted from non-financial circumstances and could not be prevented.
- If a bond prospectus was registered in respect of bonds before entry into force of 519-FZ, such bonds may be issued (including additional bonds), registered and placed without registration of a new bond prospectus.
- The Board of Directors of a JSC retains its powers until adopting a resolution by shareholders to elect new members of the Board of Directors, if the number of its members becomes less than that provided for in the applicable laws, articles of association or resolution of the general meeting of shareholders, but not less than three. In this case, the meeting of the Board of Directors is duly constituted if at least half of the remaining members of the Board of Directors attend it.
- The general meeting in a JSC may adopt resolution to elect members of the Board of Directors for a period until the third annual general meeting from the election date. In this case, the company is not subject to requirements of the JSC Law in terms of:
 - a. Resolution adopted at annual general meeting on election of the Board of Directors;
 - b. Inclusion of the Board of Directors election in the agenda of the annual general meeting;
 - c. The term of office of the Board of Directors members.

Also, the rules introduced by Federal Law No. 292-FZ dated 14 July 2022 remain in effect, stating that until 31 December 2023, inclusively, the board of directors may not be formed

by resolution of the general meeting of shareholders in companies subject to foreign "sanctions". In this case, the functions of the Board of directors are performed by the company's executive bodies (in this case, written directives of the Russian Federation are sent to them, subject to availability of a "golden share"). However, the following issues may not be delegated to them:

- Determination of the company's priority activities;
- Increase in the authorised capital;
- Setting up the executive body and early termination of its powers;
- Approval of annual reports and annual accounting statements;
- Approval of the company's internal regulations determining the company's internal audit policy and procedures and the officer responsible for the internal audit;

General meeting may determine other issues that are prohibited from being delegated to executive bodies.

9. A temporary decision-making procedure for companies with shareholders from "unfriendly" countries has been established

Decree of the President of the Russian Federation No. 16 dated 17 January, 2023 (hereinafter referred to as "**Decree No. 16**") establishes special decision-making rules for corporate bodies of Russian companies. Decree No. 16 applies to companies that simultaneously meet the following criteria:

- a company is doing business in the energy (including electricity), engineering or trade sectors;
- sanctions are imposed by an "unfriendly" country, an "unfriendly" state association (union) and/or a state institution of an "unfriendly" state on a controlling person or a beneficiary of such company¹⁰;
- persons from "unfriendly" countries own no more than 50% shares in such company;
- the company's (or its group) revenue for the year preceding the year of the corporate resolution exceeds 100 billion RUB.

If the corporate bodies of a Russian company that meets the above criteria include persons from "unfriendly" countries and/or persons nominated by persons from "unfriendly" countries, shareholders not affiliated with such states may determine by majority vote that

¹⁰ The term "controlling person" is used in the meaning provided for in the Federal Law "On the Securities Market". The term "beneficial owner" has the meaning provided for in the Federal Law "On Countering Money Laundering and Financing of Terrorism".

the votes of such members of corporate bodies shall not be taken into account.

In this case, the decision shall be taken by a majority vote of the persons not affiliated to the “unfriendly” countries, irrespective of the provisions of the articles of association, the shareholders agreement and the law applicable to it.

This procedure applies until 31 December, 2023.

10. Changing the thresholds for antimonopoly compliance

According to 519-FZ, in 2023, without a prior approval from the Federal Antimonopoly Service, but subject to subsequent notification, it is allowed to make transactions with:

- Shares (units);
- Property of business entities,
- Rights in respect of business entities,

If the total value of assets according to the last balance sheet of the person being an object of economic concentration and its group of persons is between RUB 800 million to RUB 2 billion.

If such transactions have led or may lead to a restriction of competition, the applicant/person from the applicant's group/target will be obliged to perform actions aimed at ensuring competition, according to the order of the Federal Antimonopoly Service.

11. Draft Laws

- On 22 March 2022, Draft Law No. 92282-8 "On Amendments to Certain Laws of the Russian Federation" was submitted to the State Duma of the Russian Federation. It proposes to grant the right to Russian JSCs to refrain from repaying inter-company loans issued by foreign controlling persons. Instead, Russian JSCs will be able to issue additional shares for the lender with the par value exceeding 25% of the JSC's authorised capital.



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1. Restrictions on RUB Transactions

Decree of the President of the Russian Federation dated 1 March 2022 No. 81 (hereinafter referred to as "**Decree No. 81**") adopted additional restrictions in respect of residents of "unfriendly" countries.

Decree No. 81 prohibits foreign currency residents of Russia to grant RUB loans (credits) to representatives of "unfriendly" countries from 2 March 2022. According to Decree of the President of the Russian Federation dated 18 March 2022 No. 126 (hereinafter referred to as "**Decree No. 126**"), exceptions include credits and loans to Russian residents controlled by persons from "unfriendly" countries.

Any transactions listed in this paragraph may be performed, provided that a permission is granted by the Government Commission.

2. Obligation to sell foreign currency earnings

Extract from minutes of the Subcommittee meeting dated 21 June 2022 No. 64/4 states that an obligation is imposed on residents to transfer and sell foreign exchange earnings if foreign trade contracts provided for transfer to non-residents of certain commodity items under the EAEU CN of FEA (Commodity Nomenclature of Foreign Economic Activity of the Eurasian Economic Union) (in particular, products of animal origin, precious metals, forest products, oil products, etc.). In this case, within 120 business days from the date of crediting foreign currency earnings to a foreign account, exporters are obliged to transfer it in full to an account with a bank in the Russian Federation.

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Also, according to Decree of the President of the Russian Federation dated 06 February 2023 No. 72, Russian exporters that transfer goods from Russian suppliers to non-residents in accordance with contracts concluded pursuant to intergovernmental agreements have the right to transfer foreign currency received from non-residents to accounts of Russian suppliers without its mandatory sale.

Expenses incurred by Russian exporters in the performance of foreign trade agreements, expenses stipulated by supply contracts, as well as amounts of commissions payable to correspondent banks for the transfer of funds shall be deducted from the amount received from non-residents.

Transfer of funds from non-residents in a currency that has not been agreed upon in the

supply contract may be carried out without mandatory sale only with the prior consent of the Russian supplier to the transfer, as well as to the conversion of such currency (if applicable).

3. Prepayment and transfer of funds to non-residents' accounts

Decree No. 126 vested the Board of Directors of the Bank of Russia with the powers to determine the amounts of the transactions which allow:

- To transfer advance payments or prepayments by residents to non-residents under contracts from the list determined by the Bank of Russia. An exception is provided for Russian individuals, credit institutions and VEB.RF;
- Fund transfers from Russian bank accounts of:
 - Legal entities registered in "unfriendly" countries to accounts of non-residents from other countries;
 - Non-residents from other countries to foreign accounts opened in "unfriendly" countries;
- Transfers (without opening an account), including e-money, by:
 - Legal entities registered in "unfriendly" countries to non-residents from other countries;
 - Non-residents from other countries to financial organisations in "unfriendly" countries.

4. Payment of the authorised capital and contributions

Decree No. 126 prohibits the following transactions by residents until 31 December 2023 without a permit issued by the Bank of Russia:

- Contributions to non-resident authorised (share) capitals or mutual funds;
- Contribution to a non-resident under a partnership agreement with capital investments (joint venture agreement).

By exception to this rule, residents are entitled to pay shares, contributions, units in the property of non-resident legal entities, and pay contributions to non-residents to perform simple partnership agreements, without obtaining individual permits from the Bank of Russia, if one of the following conditions is met:

- The transaction is carried out in rubles or in the currency of a "friendly" state, regardless of the location of the funds recipient;
- The transaction is carried out in the currency of an "unfriendly" state, regardless of the location of the funds recipient, but the amount of the transaction must not exceed RUB 15 million on the payment date.

The Bank of Russia's procedure for issuing permits to such transactions was established by resolution of the Bank of Russia's Board of Directors published on 25 March 2022. The Bank of Russia may determine the essential conditions of the permit, its validity term and period, suspend or terminate such permit by notifying the resident and the authorised bank at least 2 business days in advance.

5. Loans issued and foreign currency credited to foreign accounts

From 1 March 2022, Decree No. 79 prohibits foreign currency residents of ¹¹Russia to:

- Lend foreign currency to non-residents from "unfriendly" states¹², except for resident individuals who may lend foreign currency to non-residents who simultaneously meet the following requirements:
 - They are under the control of individuals¹³;
 - Information about the control over a non-resident has been disclosed to tax authorities of the Russian Federation;
 - Funds under loan agreements are provided for the purposes of maintenance (including repair, security and other expenses) of property located in any foreign states and owned by non-resident borrowers under loan agreements (in an amount not exceeding the amount of such financing for the previous calendar year);
- Credit foreign currency to foreign bank accounts¹⁴, except in the following situations:

¹¹ The Bank of Russia, in its letter dated 8 April 2022 No. 12-4-OG/6717 "On the Application of Decree No. 79 and Decree No. 81", clarified that for the purposes of Decree No. 79, the "resident" concept enshrined in the Federal Law "On Currency Regulation" must be used. Therefore, the restrictions provided for in Decree No. 79 apply to citizens of the Russian Federation residing outside the Russian Federation for more than 183 days.

¹² According to Extract from the minutes of the Subcommittee meeting dated 30 December 2022 No. 05-06-10/VN-67865, the permission to lend currency to non-residents from "friendly" states is valid until 31 March 2023.

¹³ A controlling person means a person whose participatory interest in a company is more than 25%, and a person whose participatory interest in a company is more than 10% if the participatory interest of all persons recognized as tax residents of the Russian Federation in this company exceeds 50%.

- a. Resident individuals may transfer currency to their accounts in "unfriendly" states for the purposes of:
 - o Maintenance (including repair, security and other expenses) of own property abroad (in an amount not exceeding the amount of such financing for the previous calendar year);
 - o Expenses for education and medical services;
 - o Expenses of their spouses and close relatives (if they have this status in accordance with the Family Code of the Russian Federation).
- b. Since 17 June 2022, resident individuals are entitled to transfer currency to their foreign accounts under transactions entailing title to securities, and the currency received as a result of redemption of securities held outside the Russian Federation¹⁵.
- c. If resident individuals have notified the Federal Tax Service about opened foreign accounts, they may transfer currency to accounts in banks of "friendly" states.
- d. Resident legal entities may transfer foreign currency to foreign accounts of their representative offices and branches and their employees (Decree No. 126).
 - Transfer funds using foreign electronic payment facilities¹⁶.

Decree No. 430 also vested the Government Commission with the powers to impose restrictions on residents' crediting currency to their foreign accounts and transferring funds using electronic means provided by foreign payment service providers.

According to the official explanations of the Bank of Russia No. 4-OR, the ban on credited foreign currency by residents to their accounts in foreign banks does not apply if the resident first credits rubles to a ruble account in a foreign bank, and then converts them into foreign currency. Residents may also subsequently transfer the converted currency to other person's accounts in foreign banks.

¹⁴ According to the official explanations of the Bank of Russia dated 5 September 2022 No. 9-OR, the ban on crediting currency to accounts in foreign banks (which are not foreign "subsidiaries" of Russian banks) applies only to the situations when credited foreign currency is related to dividends / distributed profit.

¹⁵ Extract from minutes of the meeting of the subcommittee of the Government Commission No. 62/1.

¹⁶ According to Extract from minutes of the meeting of the Government Commission dated 10 August 2022 No. 78/1, this ban also applies only to the situations when credited foreign currency is associated with dividends / distributed profits.

On 27 June 2022, the Bank of Russia also published clarifications relating to all situations when transfers of foreign currency by individuals between their accounts in foreign banks are **allowed**. Thus, transfers are allowed:

- From accounts opened with foreign banks before 1 March 2022 to their accounts with foreign banks;
- From accounts with foreign banks, regardless of the date of their opening, to their accounts with foreign banks in "friendly" states;
- As a result of conversion into a foreign currency of the amount in Russian rubles previously received by the resident to a bank account (deposit) opened with a foreign bank.

6. Performance of foreign currency loan obligations

Decree No. 95 of the President of the Russian Federation dated 5 March 2022 (hereinafter, "**Decree No. 95**") provided for a special procedure to pay foreign exchange liabilities to foreign creditors by residents (debtors) under:

- Credits;
- Loans;
- Financial instruments (i.e. securities and derivatives).

The procedure applies solely to liabilities exceeding RUB 10 million per month (or their foreign currency equivalent at the Bank of Russia's exchange rate as of the first day of each month).

According to the official explanations of the Bank of Russia dated 20 May 2022 No. 6-OR (hereinafter referred to as "**Explanations No. 6-OR**"), in such case, the total amount of all the debtor's obligations to all foreign creditors in a calendar month is meant. If the amount of obligations exceeds RUB 10 million per calendar month, performance in favour of any foreign creditor requires compliance with the procedure established by Decree No. 95, regardless of the amount due to such a creditor.

Several methods of performing the obligations in rubles have been established. For such purposes, a resident may open a "C" type account in the name of a foreign creditor with a Russian bank. The obligations can be performed at the Bank of Russia's exchange rate on the payment date. Subsequently, the creditor will be able to file an application for the use of such funds.

In their explanations dated 6 March 2022, <https://www.cbr.ru/press/event/?id=12736> the Bank of Russia assumes that the rules enshrined in Decree No. 95 can be applied to all foreign creditors.

According to Decree No. 254, the above procedure to perform obligations applies to obligations arising out of independent guarantees (counter-guarantees) or sureties if their beneficiaries or creditors under the financial transactions secured by such independent guarantees (counter-guarantees) or sureties are persons from "unfriendly" states.

Decree No. 254 has also clarified that upon obtaining a permit to perform obligations in a different manner than that provided for by Decree No. 95, Russian companies can terminate obligations by crediting securities to a type "C" account, provided that they can be used to terminate obligations and their value is equivalent to the value of the obligation. To do so, no consent of a foreign creditor is required.

According to Explanation No. 3-OR, the performance of the obligations in the manner established by Decree No. 95 cannot be considered as improper and recognized as a default event (and, respectively, bring into effect a cross-default condition) under the Russian law, even if it is considered a default event by foreign creditors.

7. Performance of foreign currency obligations under bank account (deposit) agreements

Decree of the President of the Russian Federation No. 618 dated 8 September 2022 has established that foreign currency obligations under bank account (deposit) agreements entered into between Russian legal entities and credit organisations falling under the sanctions of "unfriendly" states can be performed in rubles at an equivalent value.

8. Application of Decree of the President of the Russian Federation No. 529 to the legislation on currency regulation and currency control

On 8 August 2022, Decree of the President of the Russian Federation No. 529 (hereinafter referred to as "**Decree No. 529**") was adopted. According to the Decree, when Russian persons carry out foreign trade activities and grant and repay loans, the provisions of the currency legislation in respect of the settlement method are temporarily not applied. In particular, this includes the requirements for mandatory settlements through accounts in Russian banks or by transfer of electronic funds.

In addition, when carrying out foreign trade, granting and repaying loans, Russian businesses can now offset its claims against non-residents and novate non-residents' obligations. Exceptions may include situations that will be listed by the Russian Government

in the future.

On 19 January, 2023, a draft Decree of the President of the Russian Federation was published, which intends to amend Decree No. 529. According to these amendments, starting from 08 August, 2023, foreign accounts of residents may be credited with rubles and/or foreign currency under foreign trade contracts concluded with non-residents for goods, works, services, information and IP, including exclusive rights thereto, which were not received in Russia. Rubles and/or foreign currency may also be credited under loan agreements with non-residents.

9. Foreign currency turnover

The Bank of Russia has introduced some restrictions related to payments and foreign currency trading:

- Until 9 March 2023, restrictions are extended for resident legal entities that may only withdraw amounts equal to or less than USD 5 thousand (equivalent amounts in EUR, GBP, JPY). Such restrictions do not apply to any other currencies¹⁷;
- Individuals may withdraw no more than USD 10,000 from their FX accounts (deposits) until 9 March 2023¹⁸ ¹⁹. Cash in excess of such amount may be withdrawn from old accounts (deposits) and new accounts (deposits) in RUB only. From 11 April 2022, citizens may withdraw currency in both USD and EUR, unless they have drawn down the established limit²⁰;
- Restrictions on transfers by resident and non-resident individuals from "friendly" countries abroad of an amount in excess of USD 1,000,000²¹. Without opening an account, only USD 10 thousand or less may be transferred. These restrictions are valid until 31 March 2023. In addition, from 16 May 2022, non-residents from any state working in Russia under employment contracts and independent contractor agreements may transfer abroad the full amount of wages or fees for work/services under an independent contractor agreement;
- By resolution of the Board of Directors dated 19 July 2022, the Bank of Russia actually banned the purchase of foreign currency on the domestic market of the Russian Federation by non-resident legal entities from "unfriendly" countries, EXCEPT FOR:

¹⁷ <https://cbr.ru/press/event/?id=14059>.

¹⁸ See above.

¹⁹ <https://www.cbr.ru/press/event/?id=12738>.

²⁰ Information of the Bank of Russia dated 8 April 2022.

²¹ Information of the Bank of Russia dated 7 June 2022 "Increased Thresholds for Transferring Funds Abroad for Individuals"

- Sale and purchase of a foreign currency for another foreign currency;
- Performance of a delivery currency forward and swap agreement stipulating provision of a foreign currency for another foreign currency.

Transactions that fall under the exception are carried out on the domestic market by foreign banks from "unfriendly" countries without any restrictions, if the purchase rate of foreign currency or the transaction price for the purchase of this currency does not deviate by more than 2% from the exchange rate/price on the Russian foreign exchange market or on international e-trading platforms.

- From 20 May 2022, the Bank of Russia has also allowed banks to sell any foreign cash to citizens, **except for US dollars and Euros**²².

Since 14 July 2022, 292-FZ has also established that simultaneously with accrual of interest on a bank deposit of a legal entity in foreign currency, the bank may provide a commission fee that may exceed the amount of deposit interest rate. Thus, "negative rates" on deposits of legal entities in foreign currency have been actually legalised. In addition, such rules apply "retroactively".

The press service of the Bank of Russia has announced the recommendations for converting foreign currency into rubles and vice versa²³. The recommendations relate to sale of assets by a person from an "unfriendly" state for foreign currency to a Russian person. A reservation should be made that as of the date of this review, the recommendations have not been officially published.

The Bank of Russia recommends the Subcommittee to establish conditions for proportionate conversion of rubles into foreign currency when issuing permits for payments to non-residents. In addition, the buyer must coordinate the schedule for the purchase of foreign currency with the Bank of Russia. The press office has additionally clarified that the conditions are general, and the amounts of conversions do not need to be agreed by days.

The economic rationale of these recommendations is aimed at reducing the impact of transactions on the foreign exchange market, since in this way the volatility of the exchange rate will be controlled.

²² Information of the Bank of Russia dated 30 June 2022 "The Bank of Russia continues to lift previously imposed currency restrictions."

²³ <https://www.interfax.ru/russia/878774>.



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COUNTERSANCTIONS IN RESPECT OF INDIVIDUAL TRANSACTIONS AND TRANSACTION TARGETS

1. The list of restrictive measures against "sanctioned persons" has been expanded

Amendments have been made to Resolution of the Government of the Russian Federation dated 1 November 2018 No. 1300, which lists "sanctioned persons". According to the Resolution, "sanctioned persons" mean Ukrainian companies and individuals who faced frozen non-cash funds, securities and property located in the Russian Federation, and ban on transfer of funds (withdrawal of capital) outside the Russian Federation.

The current version of the Resolution additionally imposes a ban on transactions involving import of goods into the Russian Federation which manufacturer, seller or sender is a "sanctioned person". Exceptions include goods imported by individuals for personal use.

2. Residents are allowed to transfer ownership of real estate to persons from "unfriendly" states

On 13 September 2022, the Subcommittee meeting made a decision to allow residents to make transactions entailing title to real estate for the persons associated with "unfriendly" states.

The permit is valid for an unlimited period of time.

3. Restrictions to Sell Securities

From 2 March 2022, Decree No. 81 banned foreign currency residents of Russia to conclude transactions with persons from "unfriendly" countries in respect of securities.

On 19 April 2022, Extract from minutes of the meeting of the Subcommittee of the Government Commission dated 11 April 2022 No. 30 was published, which allowed Russian financial organisations controlled by foreign persons from "unfriendly" states to enter into securities sale and purchase transactions with residents:

- On their own behalf and at their own expense, and
- On their own behalf and at the expense of the clients who are not foreign persons from "unfriendly" states.

Restrictions provided by Decree No. 81 do not apply to:

- Securities registered with foreign depositories, provided, however, that the information about the accounts used for this purpose is disclosed to the Russian tax service²⁴;
- Transactions with persons from "unfriendly" states entailing title to additional shares and stocks of Russian companies, if payment is made in rubles²⁵;
- Transactions which cause persons from "unfriendly" states to obtain a title to additional shares in Russian companies, unless such persons acquire the right to dispose, directly or indirectly, of more than 25% of the shares²⁶;
- Transactions involving acquisition by residents controlled by persons from "unfriendly" states of other residents' securities (including when such transactions are made by third parties on behalf and at the expense of issuers)²⁷;
- Transactions involving acquisition of securities by resident individuals free of charge or at the price of no more than 1 ruble from spouses or close relatives, if they are foreign individuals related to "unfriendly" states.

Transactions aimed at alienation of shares by persons from "unfriendly" states are subject to the rules of Extract No. VN-67867 which are described in paragraph 1 of the section "Corporate Countersanctions" of this Alert.

On 20 July 2022, an Information Letter of the Bank of Russia was published, which recommended brokers to refrain from offering unqualified investors to purchase securities of foreign issuers (except for those issued in accordance with the legislation of the Russian Federation or those issued by the Ministry of Finance of the Russian Federation or by issuers carrying out their primary activities in the Russian Federation) and to remove the relevant technical ability to effect such purchases (e.g., through mobile applications). Initially, the Bank of Russia planned to introduce this restriction at the regulatory level, and to adopt tougher requirements for a person to be recognized as a qualified investor.

However, on 4 August 2022, the Bank of Russia softened its position on the issue²⁸. In particular, the regulator indicated that it did not exclude the possibility that unqualified investors would still have access to shares of issuers from "friendly" countries. Access will be considered "exclusively if there is no custodial risk, and after investors have passed a test and received additional information (about the inherent risks) related to such

²⁴ Explanations of the Bank of Russia No. 2-OR.

²⁵ Decree No. 254.

²⁶ Ibid.

²⁷ Extract from minutes of the Government Commission dated 21 April 2022 No. 36.

²⁸ https://www.cbr.ru/Content/Document/File/139354/financial_market_20220804.pdf.

instruments."

In its Letter dated 8 August 2022 No. IN-018-34/102, the Bank of Russia informed that the Moscow Exchange Group companies admitted only the following categories of foreign persons to participation in on-exchange trading with residents:

- Foreign persons not associated with any persons from "unfriendly" states and not under their control;
- Foreign persons controlled by Russian beneficiaries, if such control is exercised through persons related to "unfriendly" states and if information about the control has been disclosed to the tax service.

According to the Information of the Bank of Russia published on its official website and explanations dated 31 May 2022, from 30 May 2022, the Bank of Russia restricted stock trading in foreign securities blocked by international clearance and settlement organisations. In particular, foreign securities are not traded if they have passed primary listing in the US and are held on the accounts of the Best Efforts Bank's clearing depository in NBCO JSC NSD (Non-Bank Credit Organisation Joint-Stock Company National Settlement Depository).

The restriction did not affect the securities of foreign issuers operating "mainly in Russia" (HeadHunter Group PLC, Yandex N.V., Ozon Holdings PLC, Cian PLC, etc.), and the securities with primary listing on other trading platforms.

The Bank of Russia has also clarified that persons associated with "unfriendly" states may participate in on-exchange trading if they have the permission of the Government Commission.

In addition, in order to prevent "speculative trading and its negative impact on Russian quotations," the Bank of Russia has introduced additional restrictions on the operation of the stock market:

- Depositories and registrars may not carry out any transactions with securities credited from the accounts of foreign depositories or custodians for six months (i.e. until 8 February 2023), except for securities purchased before 1 March 2022;
- Securities that were purchased by non-residents from "friendly" countries controlled by foreign companies (except for Belarus residents) from other non-residents during the period from 25 June 2022 until the date of reclassification of the type "C" custody account into an ordinary custody account fall under the above mentioned semi-annual "quarantine";

- Depositories are directed to keep separate records of the assets referred to in the previous paragraph.

The restrictions do not apply to transactions approved by the Government Commission, to shares received as a result of repayment of depositary receipts, if the investor owned them before 1 March 2022, and to shares that will be received upon performance of a securities loan agreement or the second part of a repurchase transaction (if depositary receipts for such shares have been transferred within the first part).

The Bank of Russia informs securities market participants that NBCO JSC NSD has received permits from Luxembourg and Belgium to unblock foreign assets²⁹.

4. Lifting restrictions on the maximum retail market share

Until 15 June 2022, there was a ban on purchase or lease of additional retail space for retail chains whose share exceeded 25% of the volume of goods sold for the financial year.

However, Federal Law No. 499-FZ stipulates that until 31 December 2023, restrictions on the purchase and lease of retail space do not apply to transactions involving the purchase or lease of additional retail space by retailers if it is purchased/leased from a legal entity that simultaneously meets the following criteria:

- Is controlled by a foreign legal entity on the transaction date.
- A legal entity carries out retail trade in food products through the organisation of a retail network and has ceased trading activities in the Russian Federation or has declared termination of such activities.
- The grounds for recognizing the legal entity as the one controlled by a foreign legal entity arose before 15 June 2022.

5. Special rules for performance of obligations under a syndicated loan

Decree No. 430 has established that under syndicated loan agreements or contracts, to secure the performance of a syndicated loan, if the paying agents under such agreements are persons from "unfriendly" states, Russian debtor companies are obliged to perform obligations to resident creditors directly, bypassing such paying agents.

Permits to perform obligations under syndicated loans are issued by the Bank of Russia and Ministry of Finance of the Russian Federation, unless otherwise established by the Government of the Russian Federation.

²⁹

For detailed information, see <https://www.kiaplaw.ru/press-centr/sanctions/8963.html> and https://www.cbr.ru/faq/w_fin_sector/#a_tm7741

6. Retaliatory sanctions against foreign persons

On 3 May 2022, Presidential Decree No. 252 (hereinafter referred to as "**Decree No. 252**") prohibited for residents without the permission of the Government of the Russian Federation³⁰:

- To conclude transactions (including foreign trade contracts) with companies and individuals (and their controlled organisations) under Russian sanctions;
- To perform the existing obligations under the concluded transactions (including foreign trade contracts) to sanctioned foreign persons;
- To carry out financial transactions if their beneficiaries include sanctioned persons.

On 11 May 2022, the Government of the Russian Federation adopted Resolution No. 851 "On Measures to Implement Decree of the President of the Russian Federation dated 3 May 2022 No. 252" (hereinafter referred to as "**Resolution No. 851**").

In addition to the range of persons who have fallen under the sanctions of the Russian Federation, Resolution No. 851 contains additional criteria for transactions that may not be entered into with such persons. Thus, the following transactions are prohibited:

- Transactions made in favour of the sanctioned persons;
- Transactions involving entry into Russian ports of vessels owned or chartered by the sanctioned persons, in their interest or on their behalf;
- Transactions involving payments or securities trading with the participation and/or in favour of the sanctioned persons.

In addition, Decree No. 252 has established a ban on export of Russia-produced or mined products and raw materials from the Russian Federation if they are supplied to sanctioned persons.

7. Law on Restrictions and Prohibitions on Cross-Border Transfer of Personal Data

On 6 April 2022, Draft Law No. 101234-8 was submitted to the State Duma (the

³⁰ Decree of the President of the Russian Federation dated 22 December 2022 No. 942 "On Amendments to Decree of the President of the Russian Federation dated 3 May 2022 No. 252 "On Imposing Retaliatory Special Economic Measures in Connection with the Unfriendly Actions of Certain Foreign States and International Organisations."

Parliament). On 14 July 2022, it was signed by the President of the Russian Federation³¹ and came into force on 1 September 2022, with the exception of certain provisions coming into force from 3 March 2023. In regard to general provisions on cross-border transfer of personal data, the adopted law contains the following provisions:

- From 1 September 2022, the personal data processors have been required to inform competent authorities (Roskomnadzor (The Federal Service for Supervision of Communications, Information Technology, and Mass Media)) about their intention to make a cross-border transfer of personal data.
- In any case, cross-border data transfer can be prohibited or restricted in order to protect the foundations of the constitutional system, morality, health, rights and legitimate interests of citizens, to ensure the defense of the country and the security of the state.
- From 1 September 2022, the personal data processors have been required to promptly inform Roskomnadzor about any incidents of unlawful or accidental access to, provision, distribution, transfer of personal data that have resulted in violation of the rights of personal data subjects, about the person authorised by the processor to interact with Roskomnadzor on this incident (within 24 hours), and about the results of an internal investigation of the identified incident and about the persons whose actions caused the identified incident (if any, within 72 hours). In addition, to be connected to GosSOPKA system (State System of Detection, Prevention and Elimination of the Consequences of Computer Attacks).
- The time for processors to fulfill requests from authorities and citizens on the issues related to illegal personal data processing has been reduced from 30 days to 10 days.
- From 1 September 2022, the processors may not refuse to render services to citizens if citizens refuse to provide their personal data (including biometric data) in cases where obtaining consent is not mandatory.
- The principle of extraterritoriality of the Law on Personal Data has been introduced. Thus, the provisions of the Law on Personal Data apply to processing of personal data of Russian citizens performed by foreign legal entities or individuals under an agreement (or on the basis of a consent to personal data processing) with Russian citizens.

³¹ Federal Law No. 266-FZ dated 14 July 2022 "On Amendments to the Federal Law "On Personal Data", Certain Legislative Acts of the Russian Federation and Invalidation of Part Fourteen of Article 30 of the Federal Law "On Banks and Banking Activities", more details can be found at <https://rg.ru/documents/2022/07/20/dokument-dannie.html>

From 1 March 2023, extracts from EGRN (Unified State Register of Immovable Property) will not contain any information about the family name, first name, patronymic and date of birth of the owner.

Without such a record, personal data from EGRN can be provided at the request of a notary acting in accordance with a written application of the interested person in order to protect the rights and legitimate interests of the latter, and at the request of the owners themselves, their spouses and some other persons.

8. Anti-Money Laundering

Information Letter No. 019-12/1796 of the Central Bank of Russia dated 16 March 2022 sets forth several recommendations for credit institutions. In particular, they should pay more attention to the following:

- Transactions aimed to evade restrictions stipulated by Presidential Decrees Nos. 79, 81 and 95;
- Transactions aimed at evasion of currency restrictions, restrictions on withdrawal of assets by non-resident entities (residents of "unfriendly countries");
- "Non-standard customer behaviour", "transactional anomalies", changes of consumer and investment spending patterns.

As an example of "non-standard behaviour", the above Information Letter cites an increased amount and the repeatability of transactions related to the purchase of goods uncommon for consumption.

The regulator believes that such behaviour may manifest the purchase of goods for resale.

In addition, "non-standard behaviour" includes withdrawals of funds abroad and digital currency transactions.

If such transactions are identified, the Bank of Russia recommends credit institutions to:

- Pay more attention to such client transactions;
- Perform a deeper due diligence in respect of the client;
- Consider to refuse to perform such client transactions (such right is provided by Clause 11, Article 7 of Federal Law No. 115-FZ "On Combating the Legalisation (Laundering) of Criminal Proceeds and Financing of Terrorism" dated 7 August 2001);

- Consider to qualify such transactions as suspicious and submit information on such transactions to Rosfinmonitoring (Federal Financial Monitoring Agency of the Russian Federation).

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9. Draft Laws

On 26 January 2023 a draft law No. 285552-8 "On amendments to Art. 453 of Part 1 of the Civil Code of the Russian Federation" was introduced into the State Duma (hereinafter referred to as the "**Draft Law No. 285552-8**").

According to the text of the draft law, clause 3 of Article 453 of the Civil Code is proposed to be supplemented with only one phrase - "unless otherwise established by a court decision". Thus, the new wording of clause 3 of Article 453 of the Civil Code would read as follows: "in case of amendment or termination of the agreement, obligations shall be deemed modified or terminated as of the moment of the parties' agreement to amend or terminate the agreement, unless otherwise follows from the agreement or the nature of the amendment, and in case of amendments or termination of the agreement through court - from the moment the court decision to amend or terminate the agreement comes into force, unless otherwise established by a court decision".

The explanatory note to the Draft Law № 285552-8 states that if the contract is terminated or terminated in court due to a material change of circumstances, the current wording of Paragraph 3 of Article 453 of the Civil Code allows to consider the obligations as modified or terminated solely from the moment of entry into force of the relevant court decision.

According to the authors of the draft law, it is unfair that the consequences of amendment or termination of obligations under a material change of circumstances in a judicial procedure are different from the consequences of amendment / termination by agreement of the parties. Thus, in an agreement, the parties may provide that obligations shall be deemed changed or terminated from any moment - including from the moment when a material change of circumstances occurs.

Therefore, it is proposed to allow courts to "retroactively" amend or terminate obligations - that is, not only from the entry into force of a court decision, but also from the moment when a material change of circumstances occurs.



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